

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of

2000 Biennial Regulatory Review --)	CC Docket No. 00-229
Telecommunications Service Quality)	
Reporting Requirement)	

REPLY COMMENTS OF
TEXAS OFFICE OF PUBLIC UTILITY COUNSEL

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February 16 , 2001

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INTRODUCTION AND SUMMARY

The Texas Office of Public Utility Counsel (OPC) hereby presents its Reply Comments in response to the Commission's Notice of Proposed Rulemaking in CC Docket 00-229.¹ OPC has reviewed the Initial Comments filed by other parties in this proceeding on or about January 12, 2001. Nothing in those Initial Comments causes OPC to alter the positions taken in our January 12th Comments, and our overall conclusion that competition in the local exchange market has failed to progress sufficiently to render regulatory oversight of incumbent LECs' (ILECs') service quality unnecessary, or to permit such oversight to be replaced by mechanisms to make service quality data more accessible to end users. In fact, our review of the current record evidence confirms the key conclusions articulated in our initial comments that (1) competitive pressures alone are currently insufficient to incent ILECs to maintain high service quality in the local telecommunications market, and (2) the existing ARMIS 43-05 reporting requirements for ILECs are a crucial source of benchmarking information for federal and state regulators. Our reply comments address each of these issues in turn below. In addition, we respond to some of the specific arguments advanced by certain other parties relative to expansion of reporting requirements to broadband services and competitive LECs (CLECs), disposition of the ARMIS Report 43-06 (ILEC customer satisfaction surveys), and MSA/non-MSA disaggregation.

¹ Notice of Proposed Ruling, *In the Matter of 2000 Biennial Regulatory Review – Telecommunications Service Quality Reporting Requirements*, CC Docket 00-229, released November 9, 2000 ("NPRM").

REVIEW OF SERVICE QUALITY REPORTING REQUIREMENTS

I. No parties have supplied empirical evidence contradicting OPC's showing that competitive pressures alone are not yet sufficient to compel ILECs to maintain high quality local exchange services.

In our initial comments, OPC used data compiled by the FCC's Industry Analysis Division and Common Carrier Bureau to demonstrate that the level of competition existing today in the nation's local exchange service markets is insufficient to compel the ILECs to maintain high service quality.² Our position has been corroborated by several commenting parties.³ Moreover, none of the commenting parties who recommend curtailing or totally eliminating the Commission's existing ARMIS service quality reporting requirements⁴ have presented any empirical evidence that refutes OPC's showing.

In its initial comments, SBC casually refers to the "burgeoning state of competition in all segments of the industry"⁵ but provides no concrete evidence concerning the status of local competition within its service territory or elsewhere in the country. Verizon similarly claims that "competition has grown exponentially as a result of the Telecommunications Act of 1996"⁶ without any empirical support. USTA also broadly asserts that ILECs operate in a competitive environment that constrains their services to a high quality, without a shred of supporting evidence concerning specific services or markets.⁷

Qwest cites the Commission order that established a pricing flexibility regime for ILECs' interstate switched and special access services, which grants greater pricing flexibility in particular Metropolitan Statistical Areas (MSAs) upon an ILECs' showing of substantial competition in those particular markets. Of course, the access market is distinct from the retail local exchange market. Moreover, the Commission has granted such flexibility in only a fraction of the MSAs and other areas that comprise the entire geographic U.S. access market.

² OPC Comments at pages 3-5.

³ See AT&T Comments at 5; NARUC Comments at 2; and Wyoming PSC Comments at 2; and Florida PSC Comments at 3 ("Although the competitive marketplace may eventually establish a level of service quality that is sustainable in the absence of regulatory requirements, there is not yet sufficient competitive pressure in some sectors of the telecommunications industry to establish that minimum service standard.").

⁴ The reports at issue are FCC Report 43-05, ARMIS Service Quality Report, and FCC Report 43-06, ARMIS Customer Satisfaction Report.

⁵ SBC Comments at page 2.

⁶ Verizon Comments at page 3.

⁷ USTA Comments at page 2.

The initial comments of BellSouth and Sprint do not address the issue of the status of local exchange competition at all. However, Sprint appears to agree with OPC's view that regulatory oversight of an ILEC's retail service quality should be retained until that ILEC is operating in a fully competitive local exchange marketplace. In Sprint's words:

In a dominant provider environment, regulatory oversight is needed to assure that the service provider is operating in a fair and reasonable manner. Large ILECs must submit service quality reports until they are no longer considered the dominant service provider.⁸

Other parties have provided corroborating evidence of significant declines of ILEC service quality in certain regions. Several state regulatory commissions have supplied comments showing that the dominant ILEC under their jurisdiction has allowed its basic exchange service quality to deteriorate in recent months. The Indiana Utility Regulatory Commission (IURC) informs the Commission that "In the Ameritech region, not only has service quality not been maintained, but it has actually deteriorated to all time lows."⁹ The Michigan Public Service Commission (MPSC) has reached the same conclusion as well.¹⁰ The Illinois Commerce Commission (ICC) confirms that Ameritech's service quality problems have been a focus of regulatory scrutiny within the five-state Ameritech region.¹¹ This evidence clearly contradicts BellSouth's unsubstantiated contention that "price cap ILECs have fully demonstrated that incentive regulation will not cause them to allow a degradation of network quality."¹²

II. Several Commentors have provided additional support for OPC's view that the ARMIS 43-05 reports is a unique and indispensable source of consistent data for inter-carrier benchmarking.

Several of the ILECs commenting in this proceeding have attacked the Commission's existing service quality reporting regime as unnecessary and redundant to service quality reporting conducted at the state level. Sprint states that its operating companies provide some form of service quality reporting in 17 out of the 18 states in which they operate, and concludes that the ARMIS 43-05 service quality report could be eliminated in favor of service quality reporting coordinated between the states and the Commission.¹³ BellSouth contends that even the streamlined reporting proposed in the NPRM would be redundant, because BellSouth is already subject to state-level service

⁸ Sprint Comments at page 6.

⁹ IURC Comments at page 1.

¹⁰ MPSC Comments at page 3.

¹¹ ILL Comments at page 3.

¹² BellSouth Comments at page i.

¹³ Sprint Comments at 1-2.

quality reporting in each state it serves.¹⁴ The United States Telecom Association (USTA) similarly opposes Commission collection of service quality data as unnecessary and a matter for the various states to pursue as they see fit.¹⁵

Qwest's principal argument in opposition to the Commission's service quality reporting requirements is that their continuation would violate the dictates of Section 11 of the Telecommunications Act of 1996 (the Act). Section 11 requires the Commission to review its regulations applicable to telecommunications service providers every two years to "determine whether any such regulation is no longer necessary in the public interest as the result of meaningful economic competition between providers of such service."¹⁶

Qwest interprets Section 11 to mean that the Commission must demonstrate a "federal necessity" in order to retain any particular regulatory requirement that is being assessed under the biennial review process.¹⁷ Moreover, Qwest contends that a Commission regulation may be imbued with a "federal necessity," or even a federal interest, only when it applies specifically to jurisdictionally interstate services, i.e. access services, so that regulations bearing on other services, including local exchange service, fall outside of the Commission's proper role.¹⁸ However, Qwest is taking an unreasonably narrow view of the Commission's role and responsibilities under the Act, particularly when it comes to evaluating what is or is not in the public interest.¹⁹ The Commission has already concluded that the Communications Act of 1934, as modified by the Act, empowers it to act more broadly than Qwest is suggesting. In its August, 1996 *Local Competition Order*,²⁰ the Commission concluded that Section 251 of the Act authorized the Commission to establish regulations applying both to interstate and intrastate aspects of interconnection, services, and access to unbundled elements.²¹ The Commission concluded at that time that:

¹⁴ BellSouth Comments at page 6.

¹⁵ USTA Comments at pages 2-3.

¹⁶ 47 U.S.C. §161(a)(2).

¹⁷ Qwest Comments at pages 3-5.

¹⁸ *Id.* at pages 6-8.

¹⁹ As we explained earlier these Reply Comments, Qwest also exaggerates the competitiveness of the interstate access markets, which generally fail to meet Section 11's criterion of "meaningful economic competition" to warrant abandonment of service quality oversight.

²⁰ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499 (1996) (*Local Competition Order*), aff'd in part and vacated in part sub nom., *Competitive Telecommunications Ass'n v. FCC*, 177 F.3d 1069 (9th Cir. 1997) and *Iowa Utils. Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997), aff'd in part and remanded, *AT&T v. Iowa Utils. Bd.*, 119 S. Ct. 721 (1999), vacated in part on remand, *Iowa Utils. Bd. v. FCC*, 219 F.3d 744 (8th Cir. 2000), motion for partial stay granted, *Iowa Utils. Bd. v. FCC*, Case No. 96-3321 et al., order granting motion for partial stay of the mandate (8th Cir. Sept. 22, 2000).

²¹ *Local Competition Order*, 11 FCC Rcd 15499, 15544.

In enacting sections 251, 252, and 253, Congress created a regulatory system that differs significantly from the dual regulatory system it established in the 1934 Act. That Act generally gave jurisdiction over interstate matters to the FCC and over intrastate matters to the states. The 1996 Act alters this framework, and expands the applicability of both national rules to historically intrastate issues, and state rules to historically interstate issues.²²

The Commission's authority to act in this area ultimately was upheld by the Supreme Court.²³ Furthermore, during the Commission's reviews of major telecommunications company mergers, the Commission has not construed the scope of its public interest assessments to be limited solely to interstate (access) services, as Qwest would have it. Instead (as expressed in the order conditionally approving the SBC-Ameritech merger), the Commission has found that:

Our public interest evaluation necessarily encompasses the "broad aims of the Communications Act." These broad aims include, among other things, the implementation of Congress's pro-competitive, deregulatory national policy framework designed to open all telecommunications markets to competition, the preservation and advancement of universal service, and the acceleration of private sector deployment of advanced services. Our public interest analysis may also entail assessing whether the merger will affect the quality of telecommunications services or will result in the provision of new or additional services to consumers. In making these assessments, the Commission considers the trends within, and needs of, the telecommunications industry, as well as the factors that influenced Congress to enact specific provisions of the Communications Act.²⁴

As OPC demonstrates below, the information collected and made available under the ARMIS service quality reporting system unambiguously falls within the purview of the Commission to advance the aims of the Communications Act. Moreover, if the Commission were improperly impinging upon states' authority to regulate the service quality for intrastate local exchange services, presumably state regulatory commissions would have clamored for Commission repeal of those regulations. Instead, the state

²² *Id.* (footnotes omitted).

²³ *AT&T v. Iowa Utils. Bd.*, 119 S. Ct. 721 (1999).

²⁴ *In re: Applications of Ameritech Corp., Transferor, and SBC Communications, Inc., CC Docket No. 98-141 Transferee, For Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95 and 101 of the Commission's Rules*, CC Docket No. 98-141, Memorandum Opinion and Order, released October 8, 1999 (*SBC-Ameritech Merger Order*) (1999 FCC Lexis 4876), at para. 50. See also, e.g., *Bell-Atlantic-GTE Order*, FCC Docket No. 98-184, 2000 FCC Lexis 3127; *WorldCom/MCI Order* (1998), 13 FCC Rcd 18025, 18030-31; *Bell Atlantic/NYNEX Order* (1997), 12 FCC Rcd 19985, 19987.

regulatory commissions filing comments in this proceeding, as well as NARUC, have generally supported the Commission's existing service quality reporting requirements.²⁵

OPC's initial comments pointed out that the ARMIS data collection and reporting system is a unique resource for inter-carrier comparisons of service quality performance, including benchmarking analyses oriented towards uncovering "best practices" as well as "average practices."²⁶ OPC observed that the Commission has previously recognized the value of such benchmarking, and concluded that it was a cost-effective regulatory tool for on-going monitoring of service quality and detection of unreasonable or discriminatory practices.²⁷ Comments supplied in this proceeding by state regulators confirm that they find the Commission's existing service quality reporting requirements to be a unique and indispensable benchmarking resource. Several of the participating state regulatory commissions explained how they are actively using the ARMIS service quality data today:

- The California Public Utilities Commission (CPUC) uses it to monitor trends in carriers' service quality over time, and to compare the quality of service supplied by different carriers.²⁸
- The Indiana Utility Regulation Commission (IURC) uses it "compare our individual state's performance to that of other states in a meaningful way."²⁹
- The Public Utility Commission of Texas (PUCT) relies on that data to compare carriers' performance in Texas with performance in other states, and concludes that "the current ARMIS Reports 43-05 and 43-06 provide consistency and nationwide statistics that would be impossible for state regulators to collect independently."³⁰
- The Public Service Commission of Wisconsin (PSCW) uses it to establish benchmarks for service quality performance in five key areas, which are then used to

²⁵ See, e.g., IURC Comments at pages 2-3 ("The IURC has relied on the data and reports provided by the FCC to monitor the quality of service provided in our respective states."); Michigan Comments at 1 ("The MSPC relies on the information filed with the Commission in the Service Quality Monitoring program."); NARUC Comments at 1 (NARUC passed a resolution that "generally supports the reporting of telephone service quality information *at no less than its current level* unless a showing can be made that the reporting is not crucial to the monitoring of service quality.").

²⁶ OPC Comments at page 10. A "best-practices" benchmarking compares performance across a group of similarly situated independent firms in order to identify the best practice employed by one or more of the firms. An "average-practices" benchmarking examines data from several firms in order to identify the prevailing standard or to calculate the average, which then could be used as a reference against which to evaluate an individual LEC's performance. *Id.* at page 10.

²⁷ *Id.* at page 10.

²⁸ CPUC Comments at page 2.

²⁹ IURC Comments at page 5.

³⁰ PUCT Comments at page 1 (footnote omitted).

administer incentive and penalty mechanisms that the PSC has established for companies operating under alternative regulatory frameworks in Wyoming.³¹

In contradiction to the ILECs' views, these statements confirm that the existing ARMIS service quality reporting regime is fulfilling a necessary and indispensable function, notwithstanding the fact that state regulators may also require carriers to file state-specific service quality information.³²

That being said, OPC is sensitive to the issue of making carriers' data reporting obligations as minimally-intrusive and cost-effective as possible, provided that effective regulatory oversight can be maintained when and where is it necessary. In particular, OPC recognizes the likelihood that some ILECs currently may be reporting some of the service quality data required for the ARMIS 43-05 report directly to state regulatory commissions as well, albeit in different formats and/or measurement criteria. Thus, OPC supports Sprint's call for improved state-federal coordination in this area, and urges the Commission work closely with state regulators to coordinate and harmonize their collection of ILEC data relating to service quality.

One step in this direction would be for the Commission to request state regulatory commissions to file sample copies of the service quality reports that they currently require of ILECs within their jurisdiction, together with such relevant information as the reported measures' definitions and how the data is used. Having all (or at least the majority) of the various ILEC service quality reporting requirements available for examination at the same time would provide an opportunity for the Commission and interested parties to identify and eliminate unnecessary redundancies and inefficiencies, wherever they may happen to exist with respect to particular measures reported. For example, SBC states that local service installation intervals are more often reported at the state level in terms of the number of orders completed within a specified number of days, rather than reported in terms of the average order installation interval.³³ While OPC continues to believe that the average approach produces a superior measure,³⁴ understanding where and why such reporting differences exist may allow the Commission and state regulators to move towards a consensus on how such reporting should be performed in the future, thereby improving its cost-effectiveness.

Another venue in which federal-state coordination of service quality reporting activities would likely be valuable is with respect to broadband services. While OPC

³¹ PSCW Comments at page 2.

³² OPC also notes that some state regulators, such as the Michigan PSC, currently do not impose additional ILEC service quality reporting requirements and rely exclusively upon the ARMIS data collected by the Commission. (See MPSC Comments at 5) If the ARMIS regime is eliminated or severely cut back by the Commission, those state regulators may well find it necessary to establish new reporting requirements, thereby undercutting any Commission intention to reduce carriers' overall reporting burdens.

³³ SBC Comments at page 4.

³⁴ See OPC Comments at page 11.

continues to believe that the Commission is in the best position to collect and administer basic service quality data on ILECs' regulated xDSL services (which are tariffed as interstate access services), it should solicit information from state regulators concerning what data of this type is already being reported, and attempt to minimize any potentially duplicative reporting.

III. The ILEC customer satisfaction surveys reported in ARMIS Report 43-06 are inadequate and should no longer be required.

OPC had tentatively concluded in our initial comments that the ILEC-sponsored customer surveys reported in ARMIS Report 43-06 are not sufficiently well-conceived or executed to be useful for evaluating ILECs' overall service quality, and thus that Report 43-06 should be eliminated.³⁵ NASUCA has pointed out additional shortcomings in ILEC-conducted customer satisfaction surveys, and concludes that "company-sponsored surveys which only report summary evaluations as to the percentage of "satisfied" customers are of extremely limited usefulness."³⁶ We also note that AT&T does not oppose elimination of Report 43-06.³⁷ While OPC recognizes that certain state regulators, including the California Public Utilities Commission (CPUC) and the PSC of Wisconsin (PSCW) support its retention,³⁸ we nevertheless conclude that the survey requirement cannot be rehabilitated sufficiently to be a useful monitoring tool and thus recommend its elimination.

IV. The proposal to eliminate MSA/non-MSA reporting has not been adequately supported and should be rejected.

OPC had explained in its initial comments why the Commission should retain its existing requirement to disaggregate ILEC service quality data between Metropolitan Statistical Areas (MSAs) and Non-Metropolitan Statistical Areas (Non-MSAs).³⁹ Review of the other parties' comments in this proceeding has only reinforced this view. The parties joining in USTA's claim that no significant MSA/non-MSA differences in quality have occurred in the past have not buttressed their opinions with any independent empirical data.⁴⁰ No party opposing continuation of the MSA/non-MSA distinction has (a) put forth an estimate of the costs incurred in preparing those reports, (b) shown that any cost savings from its elimination would be more than minimal, or (c) even attempted to show that rural markets are not at risk for potentially disproportionate declines in service quality in an environment with uneven competitive entry. We urge the Commission to heed the observation of the Public Utility Commission of Texas (PUCT)

³⁵ OPC Comments at pages 12-13.

³⁶ NASUCA Comments, at page 36.

³⁷ AT&T Comments, at page 2.

³⁸ CPUC Comments at page 10, PSCW Comments at page 12.

³⁹ OPC Comments at pages 14-15.

⁴⁰ BellSouth Comments at page 10, Verizon Comments at pages 8-9.

that “aggregation is the enemy of thorough analysis,”⁴¹ and retain the MSA/non-MSA distinction.

V. Many parties recognize that an expansion of the Commission’s mandatory service quality reporting requirements to encompass CLECs would be counterproductive.

In our initial comments, OPC had articulated several reasons why it would be counterproductive to widen the existing service quality reporting requirements to include CLECs.⁴² While it is not surprising that the potentially affected CLECs and their representatives oppose mandatory service quality reporting,⁴³ parties with other interests, including several of their competitors, also oppose extending such mandatory reporting to CLECs.⁴⁴ Sprint in particular lends further support to our view that the quality of CLEC services are already disciplined by the marketplace so that such reporting is unnecessary.⁴⁵ OPC does not oppose voluntary reporting by CLECs, as both NASUCA and the Public Utility Commission of Texas (PUCT) suggest as an initial approach.⁴⁶ Because such data would be oriented primarily towards consumer education instead of regulatory oversight, it could be supplied at higher levels of aggregation (both geographically and with respect to timeframe) than the ILEC data needed for regulatory monitoring purposes.

VI. CONCLUSION.

After consideration of the current record in this proceeding, OPC continues to believe that the majority of the Commission proposals advanced in the NPRM to “streamline” the ARMIS service quality reporting regime are unwarranted or premature and should not be adopted at this time. Unless and until competition advances sufficiently in the markets served by the ILECs to discipline their service quality (which has not occurred to date), the Commission should not abandon the essential regulatory tool of uniform, minimally-intrusive service quality reporting afforded by most aspects of the current ARMIS regime. Instead, OPC urges the Commission to further refine its service quality reporting requirements consistent with the recommendations supplied in our initial and reply comments.

⁴¹ PUCT Comments at page 4.

⁴² OPC Comments at page 15.

⁴³ See, e.g., AT&T Comments at pages 9-12, WorldCom Comments at pages 9-10, and ALTS Comments at pages 12-13.

⁴⁴ See, e.g., BellSouth Comments at page 9; Verizon Comments at page 9; USTA Comments at page 6.

⁴⁵ Sprint Comments at page 6.

⁴⁶ PUCT Comments at pages 4-5; NASUCA Comments at page 9.

Review of Service Quality Reporting Requirements

Dated: February 16, 2001

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